



Commonwealth of Virginia
Virginia Information Technologies Agency

SOFTWARE

Date: March 22, 2006

Contract #: VA-051026-ELSY

Authorized User: State Agencies, Institutions, and other Public Bodies
as defined in the VPPA

Contractor: Electronic Systems, Inc.
10406 Lakeridge Parkway
Suite 1000
Ashland, VA 23005

Contact: See Page 3

FIN: 36-3328437

Pricing: [Exhibit B](#)

FOB: Destination

Delivery: 5 Days ARO

Term: November 30, 2005 – November 29, 2008

Payment: Net 30 days

For Additional Information, Please Contact:

Supply Chain Management
Virginia Information Technologies Agency

George Goodman
Phone: 804-371-5990
E-Mail: george.goodman@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

CONTRACT # VA-051026-ELSY
CONTRACT CHANGE LOG

[illegible]

CONTRACTOR POINTS OF CONTACT

ESI State Government Sales

ATTN: Christopher Stone
Account Executive
10406 Lakeridge Parkway, Suite 1000
Ashland, VA 23005
Telephone: 804-412-4403
Fax: 804-550-0680
Email: Christopher.Stone@ESI.net

Remittance Address

same

ESI Website: <http://www.ESI.net>

COMMONWEALTH of VIRGINIA

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

SUPPLY CHAIN MANAGEMENT

110 SOUTH 7TH STREET

RICHMOND, VIRGINIA 23219

VITA Statewide Term Contract: VA-051026-ELSY

ANTI-VIRUS SOFTWARE

Virginia Information Technologies Agency



SOFTWARE LICENSE CONTRACT ("SLC")
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SOFTWARE LICENSE CONTRACT

THIS SOFTWARE LICENSE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia, (hereinafter referred to as "VITA") and Electronic Systems Inc. (ESI or ("Supplier") with principal address as 361 Southport Circle, Virginia Beach, Virginia 23452 to be effective as of November 30, 2005 ("Effective Date"). VITA and Supplier are referred to herein individually as "Party" and collectively as the "Parties."

1. PURPOSE AND SCOPE

Supplier is a licensed reseller of Symantec software. This Contract sets forth the terms and conditions under which Supplier agrees to grant a license to use certain Symantec anti-virus Software, and to provide various Services to the Authorized Users.

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of successful delivery or completed Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable order.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized User

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

D. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

E. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to the other Party in connection with or as a result of discussions related to this Contract, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

F. Documentation

Those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to make productive use of the Software.

G. Electronic Self-Help

Any use of electronic means to exercise Supplier's termination rights upon breach or cancellation, termination or expiration of this Contract.

H. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the product described in the applicable documentation, Supplier's Proposal and such other parameters, characteristics, or performance standards for the product that may be agreed upon in writing by the Parties.

I. Services

Any services, including installation, support and training provided by Supplier under this Contract.

J. Software

The programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A or as described on Supplier's US and International price lists in effect at time of order placement.

K. Supplier

Includes any individual who is an employee, sub-contractor, or independent contractor of Supplier to provide Software and/or Services under this Contract.

L. Supplier's Proposal

Proposal submitted by Supplier and accepted by VITA, attached hereto as part of Exhibit A.

M. VITA

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

N. Warranty Period

The period of time purchased by VITA or any Authority User to receive updates and support .

3. TERM AND TERMINATION

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section shall continue to be effective and legally binding for a period of three (3) years. At VITA's sole discretion, this Contract may be extended for up to three (3) additional one (1) year periods after the expiration of the initial three (3) year period. VITA will issue a written notification to the Supplier stating the extension period, 30 days prior to the expiration of any current term.

VITA may terminate this Contract, in whole or in part, upon not less than 30 days prior written notice at any time for any reason. Supplier shall submit any contractual dispute to VITA for resolution according to the terms of the Dispute Resolution Section. Upon termination, VITA shall have no future liability except for Services rendered or Software delivered by Supplier prior to the termination date.

4. SOFTWARE LICENSE

A. License Grant

- i). Supplier is a licensed reseller of Symantec and has the right to grant to all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. The Software is the property of Symantec, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to any Authorized User.
- ii). All Authorized Users shall have the right to use, copy, modify, transmit and distribute the Software for their benefit and for the benefit of their Agents, including internal and third-party information processing.
- iii). VITA is further granted the right to transfer and/or distribute the Software or to contract with third parties to distribute on VITA's behalf subject to licensing terms and restrictions contained in this Contract.
- iv). Any Authorized User may allow access to the Software by third party vendors who are under contract with the Authorized User to provide services to or on behalf of such Authorized User. Access includes loading or executing the Software on behalf of such Authorized User or its Agents. The Authorized User will make such third party vendors aware of any confidential and proprietary information contained in software and require them not to copy or divulge said information.
- v). In the event that all of an Authorized User's copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster, Supplier shall provide to such Authorized User, at no additional cost, replacement copies of the Software and Documentation equal to the number of copies that

was licensed. Nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.

- vi). An Authorized User may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, disaster recovery and development for no additional license fees or costs. Such Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier.
- vii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
- viii). Except as provided or allowed by law, each Party agrees that it shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of the other Party.
- ix). Nothing contained herein shall be construed to restrict or limit an Authorized User's rights to use any technical data which such Authorized User may already possess or acquire under proper authorization from other sources.

B. License Type

All licenses granted, regardless of the type, include all uses set forth above.

The license(s) granted under this Section authorizes all Authorized Users and their Agents to use the Software only upon the number of CPU(s) listed on Exhibit B and upon the number of CPU(s) identified on an Authorized User's individual order. An Authorized User may transfer the Software to a different machine to the extent that the license price for such new CPU(s) is equivalent to the CPU(s) initially licensed. If the licensed CPU is inoperative because of (i) malfunction, (ii) performance of maintenance, (iii) modification to the licensed CPU, or (iv) the Software is being transferred to another CPU, such Authorized User may use the Software on a replacement CPU as long as required by the mentioned conditions.

5. LICENSE FEES, ORDERING AND PAYMENT PROCEDURE

A. License Fees and Charges

As consideration for the Software license(s) granted herein, an Authorized User shall pay Supplier the license fee set forth on Exhibit B, which lists any and all license fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during the initial term of this Contract and not more than once during any subsequent extension period of this Contract. No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers, All Cities Average, seasonally adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

B. Reproduction Rights

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD. Such Authorized User shall be responsible for making copies and distributing the Software as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

C. Ordering

Notwithstanding all Authorized User's rights to license Supplier's products under this Contract, an Authorized User is under no obligation to purchase or license from Supplier any of Supplier's

products. This Contract is non-exclusive and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Any order/payment transaction processed through the Commonwealth of Virginia's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then-current charge card limit.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Software and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

Supplier shall make available all appropriate and/or related Documentation at the time of delivery of the first unit of each Software type. Software delivered without the appropriate and required Documentation shall be considered "shipped short" until the applicable documentation has been received.

D. Invoice Procedures

Supplier shall remit each invoice to the bill to address provided with the order promptly after all Software or Services have been accepted. Payment for Software Licenses, Software Renewal and Software Support/Maintenance Services shall be annually upfront (within 30 days after receipt of invoice) unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in Exhibit B or the executed order referencing this Contract. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit B, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Software or Service type and description
- ii). Quantity, charge and extended pricing for each Software and/or Service item
- iii). Applicable order date
- iv). This Contract number and the applicable order number
- v). Supplier's federal Employer Identification Number (EIN).

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY PUBLIC BODY (as that term is defined in §2.2-4301 of the Code of Virginia) OF ANY COUNTY, CITY OR TOWN LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA ARE THE SOLE OBLIGATION OF THE COUNTY CITY OR TOWN PLACING THE ORDER AND NOT THE RESPONSIBILITY OF VITA.

E. Purchase Payment Terms

All payment obligations under this Contract are subject to the availability of legislative appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate this Contract, or any order, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, VITA may terminate this Contract, or an Authorized User may terminate an order, for goods or services dependent on such federal funds without further obligation.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Software has been shipped. Charges older than ninety (90) days may not be paid.

In the event Software is shipped without the applicable documentation, payment shall not be due until the required documentation is provided.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. All payment terms are net 30 days after Acceptance.

F. Supplier's Report of Sales and Industrial Funding Adjustment

The Supplier shall submit the "Supplier Monthly Report of Sales" which is available online at: (URL to be furnished at later date). The report shall be submitted in electronic form via electronic mail to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10th day of every month, reporting all invoices paid by VITA for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Contract. The Supplier Monthly Report of Sales template (in MS Excel format) indicated at the link above is required to be used by the Supplier and provided to VITA.

The "Supplier Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the Authorized User pursuant to this Contract. Data submitted shall include Name of Project, Supplier's tax identification number, invoice date, invoice number, order number, name of requesting entity, User name and telephone number, amount billed for services performed for previous month, and IT service category.

The Supplier shall submit Industrial Funding Adjustment payment at the same time as submitting the "Supplier Monthly Report of Sales" in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on two percent (2%) of total sales under this Contract. Supplier shall include this Contract number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. Supplier shall remit Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931. Failure to comply with reporting and payment requirements of this section shall result in default of Contract.

6. TRAINING AND DOCUMENTATION

Costs for training Authorized User personnel at either Supplier's or Authorized User's designated location on the use and operation of the Software, including instruction in any necessary conversion of Authorized User's data for such use, shall be in accordance with a mutually agreed upon schedule. Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit B.

Supplier shall deliver to VITA, three (3) complete hard copies or electronic media of Documentation, as requested by VITA. VITA shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step operating procedures for each screen and activity, and technical reference manuals. VITA shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Software and may duplicate such Documentation and include it in a VITA document or platform. VITA shall continue to include Supplier's, or Symantec's, copyright notice.

7. DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver Software according to the delivery dates set forth on the appropriate order.

B. Installation of Software

The software installation fee for the 90 Executive Branch agencies includes initial installation for the 90 Executive Branch agencies and shall be in accordance with a scope of work that has been agreed to between VITA and the Supplier. Supplier is required to install the Software in accordance with the installation schedule set forth in the scope of work or on any purchase order referencing this agreement. The installation fee for the 90 Executive Branch agencies shall be as

stated in the Exhibit B, attached hereto. For all other Authorized Users of this Agreement, the installation fee shall be based upon a flat fee or an hourly rate as mutually agreed between the parties. There shall be no cost incurred by any Authorized User for self installed software. Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Software is properly installed and fully ready for productive use, and shall supply such Authorized User with a copy of the results of the diagnostic evaluation promptly after installation completion.

8. SUPPLIER AGREES THAT FAILURE TO INSTALL THE SOFTWARE FOR IN ACCORDANCE WITH THE DELIVERY SCHEDULE IN THE APPLICABLE ORDER SHALL CONSTITUTE A MATERIAL BREACH OF THIS CONTRACT RESULTING IN DAMAGES TO SUCH AUTHORIZED USER. AS AN ESTIMATE OF THE DAMAGES SUCH AUTHORIZED USER SHALL SUFFER, SUPPLIER AGREES TO CREDIT SUCH AUTHORIZED USER AN AMOUNT EQUAL TO ONE PERCENT (1%) OF THE TOTAL LICENSE FEE, FOR EACH DAY OF UNDELIVERED OR DELIVERED BUT NON-OPERATIONAL SOFTWARE FOR A PERIOD OF THIRTY (30) DAYS FOLLOWING THE AGREED UPON DELIVERY DATE. IF THE DELAY LASTS LONGER THAN THIRTY (30) DAYS, SUCH AUTHORIZED USER MAY IMMEDIATELY CANCEL THE ORDER AND COLLECT THE DAMAGES FOR THAT PERIOD OF LATE DELIVERY. SUCH AUTHORIZED USER RESERVES ANY AND ALL OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY FOR DELAYS LASTING LONGER THAN THIRTY (30) DAYS OR FOR NON-DELIVERY.EVALUATION AND ACCEPTANCE TEST

A. Evaluation copy of Software

Supplier shall make available to any Authorized User Software for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not more than 30 days. Each new project is entitled to an evaluation copy regardless whether an Authorized User has previously licensed the Software.

B. Acceptance Criteria

Software shall be accepted when the Authorized User determines that it successfully operates in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within 30 days after receipt of the Software. Acceptance testing will be no longer than 60 days for the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts.

C. Cure Period

Supplier shall provide a correction to the non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Software for re-testing within three (3) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver Software which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software while reserving its right to revoke Acceptance if timely correction is not forthcoming.

9. GENERAL WARRANTY

Supplier warrants and represents to VITA the Software described in Exhibit A as follows:

A. Ownership

Supplier is a licensed reseller of Symantec, owner of the Software, and has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Software and Documentation

Supplier warrants the following with respect to the Software:

- i). If the Software is pursuant to a particular Request for Proposal ("RFP"), such Software shall be fit for the particular purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Software and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Software;
- ii). If such license granted is pursuant to a particular RFP and the RFP specified the hardware equipment an Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of two (2) years of the Effective Date. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by an Authorized User.
- iii). The Software provided hereunder is at the current release level unless an Authorized User specifies an older version in its order. There is no guarantee that software orders for version levels more than one version back can be fulfilled.
- iv). No corrections, work around or future Software releases provided by Supplier under the warranty provisions or under maintenance shall degrade the Software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software.
- v). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow an Authorized User to operate the Software without reference to any other materials or information.

C. Limited Warranty

During the Warranty Period, Supplier warrants that the Software shall not contain any material errors and shall function properly and in conformity with the Requirements. Supplier shall provide a correction(s) to all errors that result in a failure of the Software to function as specified in Supplier's Proposal that are identified during the Warranty Period at no additional cost to any Authorized User.

D. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Software at the time of delivery to an Authorized User; and the Software does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Software. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

E. Open Source

Supplier will notify all Authorized Users if the Software contains any Open Source code and identify the specific Open Source License that applies to any embedded code or code dependent on Open Source code, provided by Supplier under this contract.

F. Supplier's Viability

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could threaten performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

G. Supplier's Past Experience

Supplier warrants that the Software has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to the Software or Supplier.

THE OBLIGATIONS OF SUPPLIER UNDER THIS SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

10. WARRANTY SERVICES

At any time during the Warranty Period, Supplier shall provide the following warranty services (including unlimited telephonic support) to any Authorized User to maintain the Software in accordance with the Requirements, if the appropriate service level is purchased by supplier (Service Levels options have been provided to VITA):

A. Known Defects

Promptly notify all Authorized Users of any defects or malfunctions in the Software or Documentation of which it learns from any source other than an Authorized User, provide a correction(s) to any such defects or malfunctions or provide a work around until corrected, within two (2) of knowledge of such defect or malfunction and provide all Authorized Users with corrected copies of same.

B. New Releases

Provide to all Authorized Users no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

C. Coverage

Twenty-four (24) hours per day, seven (7) days a week, provide to any Authorized Users all reasonably necessary telephone or written consultation requested by such Authorized Users in connection with its use, problems and operation of the Software.

D. Service Levels

Respond to problems with the Software identified by an Authorized User in no more than two (2) hours after notification. Resolve all problems according to the following:

- i). Priority 1 (System Down) within two (2) hours.
 - ii). Priority 2 Certain Processing interrupted or malfunctioning but system able to process) within twelve (12) hours.
 - iii). Priority 3 (minor intermittent malfunctioning, system able to process data) within one (1) day.
- The level of severity (e.g., 1, 2, 3), shall be defined by the Authorized User.

E. Software Evolution

Should Supplier merge or splinter the Software previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the Software.

F. Escalation Procedures [To be provided by Supplier]

G. Remedies

If Supplier is unable to provide Software that conforms, in all material aspects, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the Software, and return all monies paid by such Authorized User for the returned Software and Documentation.

11. SOFTWARE SUPPORT SERVICES AND RENEWAL OPTIONS

After expiration of the Warranty Period, Supplier shall provide Software support services ("Support Services") no less than the Warranty Services, including new releases, updates and upgrades for an annual fee as stated in attached Pricing exhibit for then current installed base, renewable annually at such Authorized User's option for a period of initial term. Thereafter, any increase in the fee to renew Support Services shall not to exceed the fee charged for the preceding year's Support Services by more than three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers, All Cities Average, seasonally adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>) in effect at the time, whichever is less. Supplier warrants that it shall make Support Services available for all the Software products listed in Exhibit B for a period of at least five (5) years from the Effective Date of this Contract. Any Authorized User, at its sole option, may acquire Support Services. Cancellation of Support Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

12. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide Software or Services under more favorable prices, as the prices may be indicated on Supplier's current US and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

13. CONFIDENTIALITY

A. Treatment and Protection

Each Party agrees to (i) hold in strict confidence all Confidential Information of the other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not to transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by a non-disclosure contract with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). independently developed by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and

(ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

14. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless any Authorized User, its officers, directors, agents and employees ("Authorized User's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Authorized User's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Software or the Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Authorized User against whom the claim has been asserted.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Software or services, or any component thereof; or (b) replace or modify such infringing Software or services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Software or reimburse any Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Software. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Software or services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

15. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of VITA's then current security procedures as are pertinent to Supplier's operation and have been supplied to Supplier by VITA and further agrees to comply with all applicable federal, state and local laws. Supplier shall indemnify, defend, and hold VITA, its officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, its officers, directors, agents or employees, on account of the failure of Supplier to perform obligations pursuant to this Section.

16. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the Parties that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

17. GENERAL

A. Relationship between VITA and Supplier

Supplier has no authority to contract for VITA or in any way to bind or to commit VITA to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA, shall be reimbursed by Supplier upon demand by VITA.

B. Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference, including the contractual claims provision of §2.2-4363 of the Code of Virginia: http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf.

C. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

D. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution (ADR) procedures. Supplier may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

E. Advertising and Use of Proprietary Marks

Supplier shall not use any Authorized User's name or refer to any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of such Authorized User. In no event may Supplier use a proprietary mark without receiving the prior written consent of the Authorized User.

F. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

G. No Waiver

Any failure to enforce any terms of this Contract shall not constitute a waiver.

H. Assignment

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party hereto. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of the Parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be 30 days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

I. Captions

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

J. Severability

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The Parties further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

K. Survival

The provisions of this Contract regarding Software License, Warranty, Escrow, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

L. Force Majeure

Neither Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

M. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

N. Right to Audit

VITA shall have the right to request appropriate computer information, financial records and catalogs pertaining to this Contract and work hereunder at all reasonable times, and shall have the right to determine the correctness and propriety of the charges billed by Supplier. Supplier shall maintain a copy of all books, records and catalogs utilized for pricing under this Contract for at least three (3) years after the Contract's expiration.

O. Entire Contract

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- a). Exhibit A Symantec's End User License Agreement, as Amended
- b). Exhibit B Software Product List, Software License Fee, Service Charges and Payment Schedule
- c). Exhibit C Supplier's Proposal Dated April 28, 2005
- d). Exhibit D Supplier's Migration Plan

This Contract, its Exhibits, and any prior NDA constitute the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract, Exhibit A, Exhibit B, Exhibit C, Exhibit D.

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier

By:

Gary J. Lynn

(Signature)

Name:

Gary J. Lynn

(Print)

Title, Its:

Director of Sales

Date:

11/15/05

VITA

By:

Philip L. Pippert

(Signature)

Name:

Philip L. Pippert

(Print)

Title, Its:

Associate Director, SCM

Date:

12/16/05

Address for Notice:

361 Southport Circle
Virginia Beach
Virginia 23452

Attention:

Gary J. Lynn

Address for Notice:

VITA
110 South 7th Street, Suite 135
Richmond, VA 23219

Attention: Contract Administrator

Contract No. VA-051026-ELSY Exhibit A

AMENDMENT TO SYMANTEC EULA

BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
SYMANTEC Corporation

This amendment to Exhibit A, Symantec's End User License Agreement (EULA), is hereby incorporated into and made an integral part of Contract Number VA-051026-ELSY ("Contract") between the Virginia Information Technologies Agency ("VITA" or "Commonwealth" or "State") and ESI (Authorized reseller)

AMENDMENT TO SYMANTEC'S END-USER LICENSE AGREEMENT

Whereas, VITA and Authorized Users (For the purposes of this Amendment, Authorized User shall mean all public bodies, including VITA, as defined by §2.2-4301 of the Code of Virginia) wish to purchase from the Authorized Reseller pursuant to the Contract certain software manufactured by Symantec, namely "Symantec Antivirus products", (collectively "Software").

Whereas, terms under which the Software purchased by VITA and any Authorized User shall be used shall be set forth in the End User License Agreement ("EULA," sample for reference purposes only attached as Exhibit A) that accompanies the Software.

Whereas the Parties agree that the following terms shall supplement the terms of the EULA.

VITA, pursuant to §2.2-2012 of the Code of Virginia, and Symantec (collectively "the parties") are entering into an amendment of the EULA and, for their mutual convenience, the parties are using this standard amendment form agreement ("Amendment") to be effective as of December 7, 2005 ("Effective Date"). This Amendment, duly executed by the parties, is attached to and hereby made a part of the EULA and together shall govern the use of any and all Symantec Software licensed by VITA and or any Authorized User under this Contract whether or not specifically referenced in the order document.

The EULA is, with the exceptions noted herein, acceptable to VITA. Therefore, notwithstanding any terms appearing in the EULA, the Parties specifically agree:

- a). Any clause in the EULA requiring VITA or any Authorized User to maintain any type of insurance either for VITA's or such Authorized User's benefit or for Symantec's benefit shall have no effect;
- b). Any clause in the EULA renewing or extending the EULA beyond the initial term or automatically continuing the period of licensed use from term to term shall have no effect;
- c). Any clause in the EULA requiring or stating that the terms of the EULA shall prevail over the terms of this Amendment in the event of conflict shall have no effect;
- d). Any clause in the EULA requiring VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents to indemnify Symantec, its officers, employees or agents, or third parties whose content or confidential information is intertwined with the Software for any act or omission shall have no effect;
- e). Any clause in the EULA imposing interest charges contrary to that specified by §2.2-4347 et seq. of the Code of Virginia shall have no effect;
- f). Any clause in the EULA requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing this Amendment or the EULA or requiring or permitting that any dispute under this Amendment of the EULA be resolved in the courts of any state other than the Commonwealth of Virginia shall have no effect;

- g). Any clause in the EULA requiring that this Amendment be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA or any Authorized User before this Amendment is considered in effect shall have no effect;
- h). Any clause in the EULA delaying the acceptance of this Amendment or its effective date beyond the date of execution shall have no effect;
- i). Any clause in the EULA limiting or adding to the time period within which claims can be made or actions can be brought shall have no effect;
- j). Any clause in the EULA limiting the Symantec's liability for direct damages to tangible personal property or personal injury caused directly by Symantec shall have no effect. Except for direct damages arising from tangible personal property damage or personal injury directly caused by Symantec under this master contract, in no event shall Symantec be liable to an Authorized User for any special, consequential, indirect or similar damages or lost profits or lost data arising out of the use or inability to use the Symantec products even if Symantec has been advised of the possibility of such damages.
- k). Any clause in the EULA permitting unilateral modification of this Amendment or the EULA by Symantec shall have no effect;
- l). Any clause in the EULA binding VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other non-judicial entity shall have no effect;
- m). Any clause in the EULA obligating VITA, its officers, employees or agents, or any Authorized user, its officers, employees or agents to pay costs of collection or attorney's fees shall have no effect;
- n). Any clause in the EULA granting Symantec a security interest in property of VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents shall have no effect;
- o). Any clause limiting an Authorized User's ability to participate with counsel of its choosing at its own expense in any claim arising under the EULA and in which VITA, its officers, employees or agents, or any Authorized User, its officers, employees or agents is a named party, shall have no effect. Symantec shall defend and indemnify Authorized Users against any costs, liabilities or damages (including attorney's fees) arising from any claim brought against an Authorized User to the extent that such claim is based on a claim that such Authorized User's authorized use of the Software infringes a patent, copyright, trademark or trade secret. The Authorized User shall notify Symantec in writing of any such claim as soon as the Authorized User learns of it and shall cooperate fully with Symantec in connection with the defense of that claim. Symantec shall have control of that defense (including the right to settle the claim). Notwithstanding the foregoing, Symantec agrees to seek the Authorized User's prior consent, which consent shall not be unreasonably withheld or delayed by the Authorized User, in connection with a settlement that would impose any obligations on an Authorized User other than the obligation to discontinue using the Software (or obligations related thereto)."
- p). Any license to Software pursuant to contract may not be assigned, sublicensed or otherwise transferred in whole or in part by an Authorized User without Symantec's prior written consent, such consent not to be unreasonably refused or delayed. Notwithstanding the foregoing, assignment without prior approval is hereby authorized only to members of the appropriate Symantec Outsourcer program. However an Authorized User may assign its rights to request support, receive and load new releases of any nature to a third party under contract with VITA to provide such service to VITA.
- q). Any clause in the EULA bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia shall have no effect.

Contract No. VA-051028-ELSY Exhibit 8

- r). Any clause in the EULA, in conflict with this Amendment, permitting modification or replacement of the EULA pursuant to any new release, update or upgrade of Software shall have no effect.
- s). Any clause in the EULA permitting Symantec to assign, subcontract, delegate or otherwise convey this the EULA and this Amendment, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA shall have no effect.

Symantec represents that it is the owner of the Software or otherwise has the right to grant to VITA and all Authorized Users the license to use the Software granted hereunder without violating or infringing any copyright, trade secret, patent or trademark of any third party in the United States or any other country.

The parties agree that UCITA shall not apply to this Amendment, except for those provisions listed in §59.1-501.15 of the Code of Virginia as "not variable by agreement".

This Amendment and the EULA accompanying the software constitute the entire agreement between the parties regarding the licensed use of Software and may not be waived or modified except by written and signed agreement between the parties. For the purposes of this paragraph, the parties agree that signature means a physical signature and not an electronic signature.

Authorized User will use the Software under the terms and conditions contained in this Amendment to the EULA, the information contained on the front of the license certificate (the "License Certificate") and Symantec's EULA accompanying the Software. The terms and conditions contained on the reverse side of the License Certificate shall be null and void as to the purchases placed under this Contract. The License Certificate will be sent to Authorized User to confirm purchases hereunder after receipt by Symantec of each purchase order.

In the event of any conflict between the terms and conditions in this Amendment, in the License Certificate, in the EULA, the terms of the Amendment shall govern as to any conflict.

By signing below, both parties agree to the terms of this Amendment and intend thereby to be legally bound. Executed as of the last date set forth below by the undersigned authorized representatives of the parties.

Symantec

By: 

(Signature)

Name: STEVEN B. MESSICK

(Print)

Title, Its: SVP SALES AmericasDate: 12/1/05

VITA

By: 

(Signature)

Name: Philip L. Pippert

(Print)

Title, Its: Associate Director, SCMDate: 12/16/05

EXHIBIT B
SOFTWARE PRODUCT LIST, SOFTWARE LICENSE FEE, SERVICE CHARGES
AND PAYMENT SCHEDULE

Exhibit "B" is hereby incorporated into and made an integral part of Agreement Number VA-051026-ELSY between ESI and the Commonwealth of Virginia.

In the event of any discrepancy between this Exhibit B and Contract VA-051026-ELSY, Exhibit B shall control as to price.

Prices are based on annual payment. All product pricing includes the Gold Support level.

1. SYMANTEC SOFTWARE PRICING

The price per copy for Symantec anti-virus desktop software, if Symantec is declared the "desktop standard", shall be as follows:

For a one-year commitment: \$5.00 per year

For a two-year commitment: \$5.00 per year

For a three-year commitment: \$5.00 per year

Optional follow-on years: \$6.10 for the first year, \$6.25 for the second year

The price per copy for Symantec anti-virus desktop software, if Symantec is not declared the "desktop standard", shall be as follows:

For a one-year commitment: \$13.12 per year

For a two-year commitment: \$12.50 per year

For a three-year commitment: \$10.80 per year

Optional follow-on years: \$14.20 for the first year, \$14.90 for the second year

The price per copy for Symantec anti-virus server software is the same as the price per copy for Symantec anti-virus desktop software.

2. OTHER SOFTWARE: Symantec Antivirus Enterprise Edition

Product	P/N	VITA PRICING	VITA PRICING without any standardization / commitment, for Qty 2000+	
SAV EE, Crossgrade from SAV CE	10363611	\$	6.91	\$ 12.85
SAV EE, Upgrade price	10363575	\$	6.91	\$ 26.99
SAV EE, Renewal price	10363593	\$	6.91	\$ 12.24
SAV EE, Upgrade price	10363575	\$	6.91	\$ 26.99

3. SUPPORT AND PERTINENT ITEMS

Product	P/N	VITA PRICING		VITA PRICING without any standardization / commitment, for Qty 2000+
Premium Platinum Support	10015293	\$	35,700.00	\$ 35,700.00
Premium Platinum Additional Contact	10015373	\$	7,800.00	\$ 7,800.00
Premium Platinum Support, 1 YR RNW	10015297	\$	35,700.00	\$ 35,700.00
Premium Platinum Additional Contact, 1 YR RNW	10015377	\$	7,800.00	\$ 7,800.00
Platinum Support	10015077	\$	12,625.00	\$ 12,625.00
Platinum Support, 1 YR RNW	10015080	\$	12,625.00	\$ 12,625.00
Platinum Additional Contact	10015133	\$	2,950.00	\$ 2,950.00
Platinum Additional Contact, 1 YR RNW	10015137	\$	2,950.00	\$ 2,950.00
Gold Support Additional Contact	10014913	\$	1,050.00	\$ 1,050.00
Gold Support Additional Contact, 1 YR RNW	10014917	\$	1,050.00	\$ 1,050.00
Symantec Client Security (SCS), Crossgrade	10363945	\$	6.34	\$ 12.49
SCS, Upgrade	10363909	\$	9.19	\$ 17.43
SCS, 1 YR RNW	10363927	\$	6.34	\$ 12.49
SCS, Add-on to SAV EE	10363951	\$	2.66	\$ 5.32
SCS, Add-on to SAV EE, 1 YR RNW	10363969	\$	1.50	\$ 2.99
Home Use - AV	10041488	\$	0.49	\$ 5.68
Home Use - SCS	10041494	\$	0.92	\$ 7.40
Student Use - AV	10212141	\$	0.74	\$ 4.00
Student Use - SCS	10212153	\$	1.47	\$ 4.50

OTHER PRODUCT PRICING

· Value Government and Academic Software at the then current Band E pricing, for those products available at Band E.

· For all products, sold at a Band S

Product Categories: <http://enterprisesecurity.symantec.com/content/productlink.cfm>

Integrated Security, Security Management, Vulnerability Management, Policy Compliance, Intrusion Protection, Firewall/VPN, Virus Protection/Anti-Spam/Content Filtering, Anti-Spyware Solutions, Symantec

Early Warning Solutions, Managed Security Solutions, Consulting Services, Education Services, Storage Management, System Management.

Other products related to AV, Anti-Spam and Security may be added at a later time if VITA and ESI agree.

4. CO-TERMINATION OF LICENSES

License fees shall be pro-rated to allow for co-termination of licenses. For example, if installation is in January 2006 for a two-year license period, and the software license price is \$4.00 per copy, then for copies ordered in August 2006, the price would be pro-rated to \$3.00 per copy for the remaining 2 year support period. For example: All service contracts bought must be for a minimum of 12 months.

Example: \$4.00 for a 2 year plan	Cost
Ordered Q1	\$ 4.00
Ordered Q2	\$ 3.50
Ordered Q3	\$ 3.00
Ordered Q4	\$ 2.50

5 OTHER SERVICES PRICING

The hourly rate for non-VITA installations and for services not covered by the MTC or beyond migration shall be \$91.00 if Symantec is declared a "standard" or \$125.00 if Symantec is not declared a "standard". Seat Pricing for VITA's migration is \$ 4.57 per seat. This seat pricing is based on a purchase of 65,000.

6. OTHER SERVICES

ESI would like to offer the below service levels on a time and materials basis based on the skill set required and a mutually agreed to 'scope of work'. ESI's labor rates are broken out into levels based on the skill sets. The levels are:

6.1. Network Engineer - Level 1 - \$91/hr, after hours \$ 125.00
LAN OS support in a single OS environment (Microsoft or Novell)
Install of switches or Hubs
Install Network Printers
File servers install and setup
Networked Desktop/laptop troubleshooting or install
3COM NBX Telephone Systems Installation and Support
Videoconferencing

6.2. Systems Engineer - Level 2 - \$110.50/hr, after hours \$ 145.00
Heterogeneous LAN OS support (Microsoft and Novell)
Messaging Specialist (GroupWise and Exchange)
NDS or AD Design and advanced troubleshooting
Cisco Associate - basic router/switch configuration and support
3COM router/switch installation and support
Wireless LAN services

6.3. Network Consultant/Project Manager - Level 3 - \$110.50/hr, after hours \$145.00

Project management

Network and Infrastructure Design

6.4. WAN Engineer - Level 4 – \$126/hr, after hours \$ 165.00

Cisco Certified Networking Professional (CCNP)

Cisco Certified Internetworking Expert (CCIE)

IP Telephony services

Security specialists

SAN specialist

HP Openview consulting

UNIX/LINUX installation and support

6.5. Technician-Level 5-\$ 75.00-\$90.00 per hour, after hours \$110.00

PC & Server Support

Disposal

Asset & Inventory Management

7. SHIP TO AND BILL TO ADDRESSES

Shipping and billing addresses will be included on the individual Orders of Authorized Users referencing this Contract.

8. DELIVERY SCHEDULE

All shipments shall be FOB destination. Shipping charges shall be included in product pricing. No additional charges are allowed. The delivery schedule shall be specified in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation.

9. VITA POINTS OF CONTACT

Contract Administration/Compliance

Robert Gleason
Contracts Administrator
Virginia Information Technologies Agency
110 South 7th Street, East Lobby
Richmond, VA 23219-3931
Tel: (804) 371-5923
Fax: (804) 371-5969
Robert.Gleason@vita.virginia.gov

Contract Information

George S. Goodman, Jr.
Strategic Sourcing
Virginia Information Technologies Agency
110 South 7th Street, Suite 135
Richmond, VA 23219-3931
Tel: (804) 371-5990
Fax: (804) 371-5969
george.goodman@vita.virginia.gov

10. CONTRACTOR POINTS OF CONTACT

ESI State Government Sales

Electronic Systems
ATTN: Christopher Stone
Account Executive
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